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नई दिल्ली, शनिवार, मई 12, 1990/ वैशाख 22, 1912

No. 10]

NEW DELHI, SATURDAY, MAY 12, 1990/VAISAKHA 22, 1912

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके

Separate Paging is given to this Part in order that it may be filed as separate compilation

भाग II—खण्ड 3—उप-खण्ड (III)

PART II—Section 3—Sub-section (III)

(संघ राज्य क्षेत्र प्रशासनों को छोड़कर) केन्द्रीय अधिकारियों द्वारा जारी किए गए आदेश और अधिसूचनाएं  
Orders and Notifications issued by Central Authorities (other than Administrations of Union Territories)

भारत निर्वाचन आयोग

नई दिल्ली, 23 अप्रैल, 1990

आ.प्र. 20 — लोक प्रतिनिधित्व अधिनियम 1951 (1951 की 43) की धारा 106 के अनुसरण में निर्वाचन आयोग एतद्वारा 1985 की निर्वाचन अर्जी सं. 1-1 में दिया गया पटना उच्च न्यायालय (पटना) का तारीख 28-11-1989 का निर्णय प्रकाशित करता है।

[सं. 82/बिहार/(1/85)/88]

आदेश से

बाबू राम, अवर सचिव

ELECTION COMMISSION OF INDIA

New Delhi, the 23rd April, 1990

O.N. 20.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951) the Election Commission hereby publishes the judgement dated 28-11-1989 of the High Court of Judicature at Patna in Election Petition No. 1 of 1985.

IN THE HIGH COURT OF JUDICATURE AT PATNA  
Election Petition No. 1 of 1985

In the matter of an application under Section 81 of the Representation of the People Act, 1951

Mahabir Paswan—Petitioner.

Versus

Gyan Bahadur Singh and others—Respondents.

For the Petitioner—M/s. Shivaji Sinha and Uday Shankar Sharan Singh.

For the Respondents—M/s. S. N. P. Sharma, Amarendra Kumar Singh and A. K. Singh Chauhan.

PRESENT:

The Hon'ble Justice Suresh Chandra Mookherji.  
Mookherji, J.—This application is referred under section 81 of the Representation of the People Act, 1951 (hereinafter to be referred to as 'the Act') challenging the election of the returned candidate late Sri Jagjiwan Ram respondent no. 1 elected to the Lok Sabha from 38 Sasaram (Scheduled Caste) Lok Sabha Constituency.

2 The facts in short are that there were general elections to Lok Sabha some time towards the end of December, 1984. The last date for filing nomination papers was on 27-11-84 and accordingly, the parties filed their nomination papers. The last date for scrutiny of nominations was on 28-11-84 and that of withdrawal of candidature on 30-11-84. The date of poll was fixed on 24-12-84 and counting on 28-12-84.

3. The petitioner's case is that he was allotted the symbol "hand" and "scales" to the then respondent no. 1. There were some other candidates, who were allotted different symbols. However, the nomination papers of two of the candidates were rejected. After counting, the respondent no. 1 late Sri Ram was declared elected on 29-12-84. It is alleged that during the course of counting of ballot papers on 28-12-84, the counting agent of petitioner at table no.

10 made an application to the Returning Officer, respondent No. 8 about the illegalities committed at booth No. 118 Madhya Vidyalaya, Janjara on the ground that none of the ballot papers were cast at the said booth contained the requisite distinguishing mark and though this was admitted by the Assistant Returning Officer, Chanari, yet he arbitrarily rejected the said petition and allowed such doubtful and suprious ballot papers to be counted in favour of respondent no. 1. That on 29-12-84 at 445 A.M. the petitioner also filed a petition before the Returning Officer for recounting of the ballot papers of Chainpur, and Mohania Assembly segments on the ground of serious illegalities committed in counting of ballot papers by the concerned counting officials and also brought to his notice that the counting figures of the counting agents and that of counting officials differed by a margin of several thousand of votes in those segments, but the Returning Officer did not check and verify the aforesaid complaint. On the same day at about 6 A.M. he filed another petition demanding recounting of ballot papers of Sasaram, Chenari, Mohania and Chainpur Assembly segments on several grounds as detailed in paragraph 10 of the application and again a similar petition was filed at 9.20 A.M. giving further details for recounting of votes as detailed in paragraph 12 whereupon an assurance was given by the Returning Officer that there would be recounting on the following morning. On 31-12-84 he (petitioner) also informed and drew the attention of the Chief Electoral Officer Bihar, Patna with a copy to the Election Commission about the facts, inter alia, that 1372 votes were manoeuvred by the Returning Officer and other officials involved in the counting in favour of respondent No. 1. Some other allegations were also made against the Block Development Officer Kudra and it was also informed that with the result of these irregularities, the bundles of 7,000 (seven thousand) votes cast in favour of the petitioner, were removed, 2,000 (two thousand) votes of Chainpur Assembly segment cast in favour of the petitioner were not counted and 1100 (eleven hundred) unsigned ballot papers cast in favour of respondent no. 1 were not rejected. But his complaint was not properly enquired into, although there was a direction from the Election Commission in that regard, on the contrary, some ante-dated order was passed with a mala fide motive and a declaration of Respondent no. 1 as indicated was illegally made at 11.30 A.M. by the Returning Officer. A prayer has accordingly been made to declare the election of respondent no. 1, returned candidate, as void, and also for inspection and recounting of the ballot papers and declare the petitioner as a member to the Lok Sabha from 38 Sasaram (S.C.) Lok Sabha Constituency.

4. During the pendency of this application, the returned candidate, respondent No. 1 late Sri Jagjiwan Ram died on 6th July, 1986. As no other respondent had filed his written statement to contest the election petition, a notice under section 116 of the Act was published in the Gazette of India on 20-12-86. After the publication, three persons filed petition for substituting them in place of late Sri Ram namely, (1) Sugrib Ram (2) Gayan Bahadur Singh and (3) Raja Ram and they were allowed to be substituted in place of Sri Ram and the Court directed them to file written statement by a particular date. Thereafter, some further development took place. An objection was raised, to expunge the name of the substituted respondent No. 1(A) named Sugrib Ram under section 116 of the Act for supporting the Election petitioner in his written statement and by an order dated 13-11-87, the name of respondent no. 1 (A) Sugrib Ram was expunged with a further direction that the written statement filed by him would not be taken into consideration at the trial. In course of the trial, the Election petitioner filed an application for inspection and recounting of ballot papers.

5. Whilst this matter was in the process of bearing, the President of India issued a notification calling upon the Constituencies for electing members to 9th Lok Sabha and Assemblies of some of the States. The respondent has therefore, raised an objection at the further hearing of this application, in view of the said notification on the ground, that it is now academic to decide whether or not late respondent's election should be declared as void. A petition has also been filed under section 121 of the Code of Civil Procedure read with section 87 of the Act stating, inter alia that for election of the members to the 9th Lok Sabha all the legal steps in-

cluding issuance of election programmes, filing of nomination papers by the candidates have been done and the scrutiny of the nomination papers in the State of Bihar has already been completed on 31st October, 1989. It is further stated that the election petitioner has now no concern with the election of Sasaram Parliamentary Constituency as he is not a candidate from that constituency, as he has filed his nomination paper from Hajipur Parliamentary Constituency and Smt. Meera Kumar, daughter of late Sri Ram is contesting election from Sasaram Constituency and as such, now only in the election process, the polling and declaration of result are to be done and there is every likelihood that the same will be completed by the end of November, 1989. That though the Lok Sabha has not been formally dissolved by the President of India, now only the follow up actions after the dissolution of Lok Sabha are required to be taken for the formation of the 9th Lok Sabha and in such circumstances, the issue regarding allegations of miscounting of votes as involved in the election petition has become academic and dead and as such, no useful purpose would be served to the parties by hearing the election petition in respect of inspection of ballot papers and accordingly, a prayer has been made to dismiss the election petition without deciding the case on merit.

6. No rejoinder to this application has been filed, but at the time of hearing of this application the learned Counsel for the petitioner has raised only one point that the 8th Lok Sabha having not been dissolved by the President of India it has to be taken to be continuing till its term expires sometime in January, 1990 or till the date it is dissolved, whichever is earlier and therefore, it cannot be said that the main issue involved is an academic and dead as has been sought to be made out in the petition filed on behalf of the respondents. The other facts regarding filing of nomination, date of elections etc. have not been disputed and rightly.

7. The learned Counsel for the respondents has relied on a decision of the Supreme Court, reported in 1974 S.C. 505 (Loknath Padhan vs. Birendra Kumar Sahu). In that case, the election of the elected candidate was challenged on the ground that the elected candidate was disqualified from contesting the election under section 9(A) of the Act. The application was dismissed by the High Court and when the matter was pending in appeal before the Supreme Court, the Orissa Legislative Assembly was dissolved by the Governor under Article 174(2)(b) of the Constitution, and a preliminary objection was taken by the elected candidate-respondent that in view of the dissolution of the Assembly it was academic to decide whether or not the respondent was disqualified from being a candidate under section 9(A) and while disposing of this objection their Lordships observed that it is well settled practice recognised and followed in India that if an issue is purely academic in that, its decision one way or the other would have no impact on the position of the parties, it would be waste of public time and indeed not proper exercise of authority for the court to engage itself in deciding it. Their Lordships further observed that where an appeal is an election petition case in which the election of the successful candidate to the Orissa Legislative Assembly was challenged under section 9A of the Act and during its pendency the Assembly was dissolved, it become wholly academic to consider whether the elected candidate was disqualified on the date of nomination. The decision would not have any effect on any of the parties and hence, it was futile to proceed with the case and decide it on merits and further observed that the position would be different if the election was challenged on the ground of corrupt practice.

8. It is an admitted position that the election of the deceased respondent was not challenged on the ground of corrupt practice. It has been challenged mainly on the ground that ballot papers were not properly counted and if properly counted, the election petitioner would have been elected as a member to the 8th Lok Sabha. It is not in controversy now that the election processes have been completed and after all the results of the elected members to the Lok Sabha are declared, other follow up actions will be taken.

9. The stage of this case has already been indicated and it is obvious that it will take some more time to dispose of finally. The learned Counsel for the respondents in course

of his submissions rightly raised a point that even in the event of petitioner's success, he will not be in a position to be a member to eighth Lok Sabha as by then the ninth Lok Sabha is likely to be constituted.

10. As the position stands today, the eighth Lok Sabha already stands dissolved. Following the principles laid down by the Supreme Court, in the decision cited and the eighth Lok Sabha having been dissolved, it is now wholly academic to consider whether the deceased-respondent was not entitled to be elected on account of wrong counting of the votes in his favour and since this is the only ground, it would be futile to bear this application any further on merits. I accordingly, dismiss the election application with no order as to costs.

11. Let a copy of this judgement be sent to the Election Commission and Speaker, Lok Sabha, New Delhi for information.

Sd/- S. C. Mookherji.

PATNA HIGH COURT,

The 28th November, 1989.

True copy.

Sd/-

Secretary.

[No. 82/BR/(1/85)/88]

BABU RAM, Under Secy.

